IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Victor Lamont Rogers,	C/A. No. 2:15-131-CMC-MGB
Plaintiff	
v.	
Officer Quick; Lt. Jefferson, *SMU at Evans Inst.*; and Officer Davis;	**Opinion and Order**
Defendants.	

This matter is before the court on Plaintiff's *pro se* complaint filed pursuant to 42 U.S.C. §1983 on January 12, 2015. ECF No. 1. The Magistrate Judge entered an Order authorizing service of process on March 4, 2015. ECF No. 6. Despite the summons being returned executed, Defendants did not respond to the Complaint.

On or about March 17, 2015, Plaintiff died while incarcerated at Lee Correctional Institution. On October 7, 2015, the Magistrate Judge entered an Order setting out the procedures for substitution of a successor or representative for a decedent party so that the case could continue. *See* ECF No. 15. That Order allowed ninety days for a Motion for Substitution to be filed, and was mailed to the address provided by Plaintiff as well as his heirs. *Id.* Both copies of the Order were returned as undeliverable. ECF No. 18, 19. The Order was re-mailed on October 22, 2015. ECF No. 20. On February 22, 2016, the Magistrate Judge issued a similar Order, allowing a second ninety day period for a Motion for Substitution to be filed. ECF No. 22. This Order was mailed to Plaintiff's heirs, the personal representative of Plaintiff's Estate, and the attorney for the Estate. *Id.* No filing has been received to date, and none of the copies of this Order as mailed to Plaintiff or his Estate were returned.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings and a Report and Recommendation ("Report"). On June 6, 2016, the Magistrate Judge issued a Report recommending that the case be dismissed pursuant to Fed. R. Civ. P. 25(a)(1) as no Motion for Substitution has been received by the court. ECF No. 26. The Magistrate Judge advised the Parties of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so. The copy of the Report mailed to decedent Plaintiff was returned as undeliverable, with the envelope marked "Deceased." ECF No. 29. However, the other copies of the Report (sent to the personal representative and attorney for Plaintiff's estate) were not returned to the court. No party has filed any objection or response to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (citation omitted).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge.   Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

This action is dismissed without prejudice for failure to substitute pursuant to Fed. R. Civ. P. 25(a)(1).

IT IS SO ORDERED.

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s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

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Columbia, South Carolina
June 28, 2016